

## **DEPARTMENT OF CONSUMER AFFAIRS**

Adopt new Chapter 6 of Division 38 of Title 16 (commencing with Section 4000) of the California Code of Regulations to read as follows:

### **Chapter 6. Telephone Medical Advice**

#### **ORDER OF ADOPTION**

##### **Article 1. General Provisions.**

###### **4000. Citation.**

Chapter 6 of Division 38 of Title 16 shall be cited and referred to as the “Telephone Medical Advice Services Regulations.”

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Section 4999, Business and Professions Code.

###### **4001. Definitions.**

For the purpose of the regulations contained in this chapter, the terms:

(a) “Act” shall mean the laws governing telephone medical advice services as contained in Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code, Section 1348.8 of the Health and Safety Code, and Section 10279 of the Insurance Code.

(b) “Bureau” shall mean the Telephone Medical Advice Services Bureau within the Department of Consumer Affairs.

(c) “Business” shall mean individual, partnership, corporation, company and any other business entity.

(d) “Code” shall mean the Business and Professions Code.

(e) “Consumer” shall mean “patient,” “client,” or any other user of a telephone medical advice service residing in California.

(f) “Registrant” shall mean a telephone medical advice services business registered by the Bureau under the Act, including the individual owner, partners, officers, members or trustees of the registrant.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Section 4999, Business and Professions Code.

## **Article 2. Applications.**

### **4010. Applications.**

(a) Businesses applying for initial registration shall complete and submit the Application for Registration Form A-1 Rev: 03/13/2001, incorporated herein by reference, and Form A-2 Rev: 03/13/2001 incorporated herein by reference and fee prescribed in Section 4040 (a) to the Bureau for processing.

(b) In addition to providing the information required by Section 4999.1 of the Code, an applicant shall comply with the following requirements:

(1) If the business is a limited liability company, the application shall be signed by one of the owners, and she or he shall be identified as the owner, partner, president, secretary, member, or trustee.

(2) If the business is a corporation, the name and address of the corporation shall be provided.

(c) A registrant seeking to renew a telephone medical advice services registration shall pay the fee(s) specified in Section 4040. All registrations shall expire 24 months after the initial date of registration on the last day of the month.

NOTE: Authority cited: Section 4999.6, Business and Professions Code.

Reference: Sections 4999.1 and 4999.2, Business and Professions Code.

### **4011. Permit Processing Times.**

(a) "Permit" as defined by the Permit Reform Act of 1981 means any license, certificate, registration, permit, or any other form of authorization required by a state agency to engage in a particular activity or act. Processing times for the Telephone Medical Advice Services Bureau are set forth below. The actual times reflect the period from the date the Bureau receives an application to the date a registration is issued.

(b) Applications for an Initial or to Renew a Registration: The Bureau shall inform, in writing, an applicant seeking a registration (initial or to renew) within thirty (30) calendar days from receipt of an application of its decision whether the application is complete and accepted for filing or is deficient and what specific information is needed.

(c) Once an application is "complete", the Bureau shall inform an applicant seeking a registration (initial or to renew) within forty-five (45) calendar days after completion of the application of its decision whether the applicant meets the requirements of registration and is approved. "Completion of the application" means that a completed

application form together with all required information, documentation, and fees have been received by the Bureau.

(d) The minimum, median, and maximum processing times for registration from the time of receipt of a completed application until the Bureau makes a decision are set forth below:

Initial Registration:

Minimum	=	Unknown*
Median	=	Unknown*
Maximum	=	Unknown*

Renewal of Registration

Minimum	=	Unknown*
Median	=	Unknown*
Maximum	=	Unknown*

\*The Bureau was enacted by the Legislature on January 1, 2000 and the actual processing times based on the prior two years are not yet known.

NOTE: Authority cited: Section 4999.6, Business and Professions Code and Section 15376, Government Code. Reference: Section 15376, Government Code.

4012. Substantial Relationship Criteria.

For the purposes of denial, suspension, or revocation of a Telephone Medical Advice Services registration pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a telephone medical advice service if it evidences present or potential unfitness of a telephone medical advice service to perform the functions authorized by its registration in a manner consistent with the public health, safety, or welfare.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Sections 475 and 4999.3, Business and Professions Code.

4013. Criteria for Rehabilitation.

(a) The Bureau shall evaluate the rehabilitation of the applicant, or registrant, or petitioner and her or his present eligibility for a registration under the following circumstances:

(1) When considering the denial of an applicant for registration under the provisions of Section 480 of the Code.

(2) When considering the suspension or revocation of a registration on the grounds that a registrant has been convicted of a crime.

(3) When considering a petition for reinstatement of a registration under the provisions of Section 11522 of the Government Code.

(b) In evaluating the rehabilitation of the applicant, registrant, or petitioner, the Bureau shall consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial that also could be considered as grounds for denial under Section 480 of the Code when considering an applicant pursuant to subsection (a) (1) of this section.

(3) The total criminal record when considering an applicant, registrant, or petitioner pursuant to subsections (a) (1), (a) (2), and (a) (3) of this section.

(4) The time that has elapsed since commission of the act(s) or crime(s) under consideration.

(5) The extent to which the applicant, registrant, or petitioner has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant, registrant, or petitioner.

(6) Evidence, if any, of rehabilitation submitted by the applicant, registrant, or petitioner. Such evidence may include, but is not limited to, proof of additional training or education, or evidence of service to the community.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Section 482, Business and Professions Code.

### **Article 3. Registered Telephone Medical Advice Services.**

4020. Engaged in the Business.

This Act shall not apply to businesses that are providing telephone medical advice services to patients temporarily visiting from out-of-state provided that the business does not otherwise provide telephone medical advice services to patients in California.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Sections 4999 and 4999.7, Business and Professions Code.

#### 4021. Good Professional Practice.

“Good professional practice” is that standard of practice consistent with the current ethical principles and codes of conduct, and that meets and adheres to laws and regulations as specified in Division 2 of the Business and Professions Code, that apply to the professional practices that may provide telephone medical advice as specified in Section 4999 of the Business and Professions Code.

NOTE: Authority cited: Sections 4999.2, and 4999.6 of the Business and Professions Code. Reference: Section 4999 and 4999.2, Business and Professions Code.

#### 4022. Consumer Complaints; Disclosure.

##### (a) Complainant Rules:

(1) Consumers that contact the Bureau directly to complain about a telephone medical advice service shall be sent, by the Bureau, a Consumer Complaint Form A-5, Rev: 05/17/2001, incorporated herein by reference, Pages 1 and 2. The consumer shall complete Form A-5 and return it to the Bureau for processing in accordance with Section 129 of the Code.

(2) If a consumer refuses to execute the authorization for release of information contained in Form A-5, Page 2, the Bureau may not be able to investigate or forward the complaint.

##### (b) Registrant's Rules:

(1) If a registrant receives a consumer complaint in writing relating to telephone medical advice, the registrant shall immediately send the consumer the Consumer Complaint Form A-5.

(2) If a registrant receives a consumer complaint by telephone relating to telephone medical advice, the registrant shall immediately send the consumer the Consumer Complaint Form A-5.

(3) If a registrant receives a completed Consumer Complaint Form A-5 the registrant shall immediately forward the complaint to the Bureau.

(4) Registrants shall report all data based on any form of written and verbal complaints as described in subsections (b)(1), (2), and (3) and report such data to the Bureau every calendar quarter.

(5c) The Bureau shall forward a copy of any complaint submitted to the Bureau pursuant to this chapter within ten (10) business days to the entity that issued the license to the licensee involved in the advice provided to the consumer.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Sections 129 and 4999.3, Business and Professions Code.

#### 4023. Quarterly Reports.

(a) The Bureau shall utilize Quarterly Reports to collect complaint data pertaining to telephone medical advice as mandated by Section 4999.8 of the Code. Every registrant shall file a Quarterly Report Form A-3, Rev: 03/13/2001 incorporated herein by reference, with the Bureau.

(b) A registrant that signed the initial application for registration shall date and sign the quarterly report under penalty of perjury.

(c) Registrants shall file quarterly reports to the Bureau within 30 days of the end of each calendar quarter. Each calendar quarter is specified as follows:

(1) First Quarter covering January 1 through March 31

(2) Second Quarter covering April 1 through June 30

(3) Third Quarter covering July 1 through September 30

(4) Fourth Quarter covering October 1 through December 31

(d) If there are no changes to the health care professional information contained in the most recent quarterly report, the registrant shall so certify to this on Form A-3 and is thus exempt from providing Form A-2.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Sections 4999.1 and 4999.8, Business and Professions Code.

#### 4024. Recordkeeping.

(a) Registrants shall make records of the telephonic exchange of information between the telephone medical advice service and each consumer. The record shall be adequate to ensure effective review by the Bureau; example, permitting an administrative review of the record to investigate a complaint. At a minimum, the record shall consist of an accurate summary of the telephonic information exchanged including, but not limited to, the names of the caller and health care provider, date and time of the call, the patient's question regarding his or her or a family member's medical care or treatment, and the response that was provided.

(b) For the purposes of this chapter, the term "record" or "records" includes all material possessed by the registrant regardless of form or format that relates to the provision of telephone medical advice to consumers in this state.

(c) Records created pursuant to this chapter shall be maintained for a period of five years. Registrants shall also maintain copies of all consumer complaints made to the registrant regarding its telephone medical advice services for a period of five years.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Section 4999.2, Business and Professions Code.

#### 4025. Inspection of Records.

(a) All records relating to the provision of telephone medical advice to consumers in this state shall be open to inspection by the Bureau, or its authorized representatives, during regular business hours. A copy of all those records shall be provided to the Bureau within ten (10) business days of the Bureau's request.

(b) This Act will be executed consistent with provisions of the California Confidentiality of Medical Information Act, Part 2.6, Division 1 of the Civil Code.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Section 4999.2, Business and Professions Code and Part 2.6, Division 1 of the Civil Code.

### **Article 4. Enforcement Proceedings.**

#### 4031. Citations, Content, and Service.

(a) The director or her or his designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and/or fines for violations by registrants of the statutes and regulations governing telephone medical advice service providers.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.

(c) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation, or both.

(d) The citation shall inform the cited registrant of the right to a citation review conference concerning the matter and of the right to an administrative hearing.

(e) The Bureau shall serve the citation upon the cited registrant personally or by certified mail, return receipt requested.

NOTE: Authority cited: Sections 125.9 and 4999.6, Business and Professions Code.  
Reference: Sections 125.9, 4999.2 and 4999.3, Business and Professions Code.

#### 4032. Violations and Fines.

(a) The director or her or his designee shall consider the factors listed in Section 125.9 of the Code in determining the amount of the fine to be assessed or the terms of the order of abatement in any citation.

(b) The director or her or his designee may, in her or his discretion, assess a fine not to exceed \$2,500 for each inspection or each investigation made with respect to the violation, and issue an order of abatement for any violation of the Code or regulations governing telephone medical advice services.

NOTE: Authority cited: Sections 125.9 and 4999.6, Business and Professions Code.  
Reference: Sections 125.9, 4999.2 and 4999.3, Business and Professions Code.

#### 4033. Citations for Unregistered Businesses.

(a) The director or her or his designee may issue citations, in accordance with Section 148 of the Code, against any business who is performing or who has performed telephone medical advice for which registration is required under the act or regulations governing telephone medical advice services and is not or has not registered. "Telephone medical advice" means a telephonic communication between a patient and a health care professional, wherein the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment. This subdivision applies to businesses that are unregistered in California.

(b) Each citation issued under this section shall contain an order of abatement, where appropriate.



(c) The director or her or his designee shall consider the factors listed in Section 125.9 of the Code in determining the amount of the fine to be assessed or the terms of the order of abatement in any citation.

(d) The director or her or his designee may, in her or his discretion, assess a fine not to exceed \$2,500 for the unregistered activity in accordance with Section 148 of the Code and issue an order of abatement for any violation of the Code or regulations governing telephone medical advice services.

(e) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.

(f) The Bureau shall serve the citation upon the cited business personally or by certified mail, return receipt requested.

(g) The citation shall inform the cited business of the right to a citation review conference concerning the matter and of the right to an administrative hearing.

(h) The sanction authorized under this section shall be separate from and in addition to any civil or criminal remedy.

NOTE: Authority cited: Sections 148 and 4999.6, Business and Professions Code.  
Reference: Sections 125.9, 148, 4999.2, and 4999.3, Business and Professions Code.

#### 4034. Compliance with Citation/Order of Abatement.

(a) Orders of abatement may be extended for good cause. If a cited business or registrant who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond her or his control after the exercise of reasonable diligence, then she or he may request from the director or her or his designee an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) If a citation is not contested, or if the citation is appealed and the business or registrant cited does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the Bureau or other appropriate judicial relief being taken against the business or registrant cited.

(d) If a registrant's fine is not paid after a citation has become final, the fine shall be added to the cited registrant's renewal fee. A registration shall not be renewed without payment of the renewal fee, fine, and any other mandated fees.

(e) Failure to pay a fine by an unregistered business is grounds for denial of the application for registration.

NOTE: Authority cited: Sections 125.9 and 4999.6, Business and Professions Code.  
Reference: Sections 125.9, 4999.2 and 4999.3, Business and Professions Code.

#### 4035. Contest of Citations.

(a) In addition to requesting a hearing provided for in Section 125.9 of the Code, the cited business or registrant may, within 30 days after service of the citation, notify the director or her or his designee in writing of her or his request for an informal citation review conference with the Bureau chief regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The director or her or his designee shall hold, within thirty (30) days from the receipt of the request, an informal citation review conference with the business or registrant cited and/or her or his legal counsel or authorized representative.

(c) At the conclusion of the informal citation review conference, the director or her or his designee may affirm, modify, or dismiss the citation, including any fine assessed or order of abatement issued. The director or her or his designee shall state in writing the reasons for her or his action and serve, as provided in subsection (e) of Section 4031 and subsection (f) of Section 4033, a copy of her or his findings and decision to the business or registrant cited within fifteen (15) business days from the date of the informal citation review conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine assessed and the order of abatement. The cited business or registrant is not entitled to another informal citation review conference.

(d) The cited business or registrant does not waive her or his request for a formal hearing to contest a citation by requesting an informal citation review conference after which the citation is affirmed by the director or her or his designee. If the citation is dismissed after the informal citation review conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine assessed or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued.

(e) If a cited business or registrant wishes to contest an affirmed or modified citation, the cited business or registrant shall, within 30 days after service of the citation, contest the affirmed or modified citation by submitting a written request for an

administrative hearing, as provided for in subdivision (b) (4) of Section 125.9 of the Code, to the director or her or his designee. An informal citation conference shall not be held on affirmed or modified citations.

NOTE: Authority cited: Sections 125.9 and 4999.6, Business and Professions Code.  
Reference: Sections 125.9, 4999.2 and 4999.3, Business and Professions Code.

## **Article 5. Fees.**

### **4040. Fees.**

(a) The telephone medical advice services application processing and initial registration fee shall be \$7500, payable by the applicant at the time that the application is submitted to the Bureau.

(b) The telephone medical advice services biennial renewal fee shall be \$7500.

(c) The delinquency fee for any registration that is renewed after its expiration date shall be \$1000.

NOTE: Authority cited: Section 4999.6, Business and Professions Code. Reference: Section 4999.5, Business and Professions Code.